

# Exhibit 2

Contains Confidential Portions

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC., )  
MARVEL CHARACTERS, INC., )  
and MVL RIGHTS, LLC, )  
)

Plaintiffs, )

vs. )

Case No.

10-141-CMKF

LISA R. KIRBY, BARBARA J. )  
KIRBY, NEAL L. KIRBY, and )  
SUSAN N. KIRBY, )  
)

Defendants. )

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\*\*REVISED\*\*

PARTIALLY CONFIDENTIAL  
PURSUANT TO PROTECTIVE ORDER  
(Pages 66 through 70)

VIDEOTAPED DEPOSITION OF LAWRENCE LIEBER

New York, New York

January 7, 2011

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 35338

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January 7, 2011

Partially confidential videotaped deposition of LAWRENCE LIEBER, held at Weil Gotshal & Manges, 767 Fifth Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

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A P P E A R A N C E S:

WEIL, GOTSHAL & MANGES

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Los Angeles, California 90067

BY: MARC TOBEROFF, ESQ.

ALSO PRESENT:

ELI BARD, Marvel Entertainment

MATTHEW SMITH, Legal Video Specialist

1 L. Lieber

2 Q. If you need a break at any time, just  
3 let us know. Okay?

4 A. (Witness nods.) Yes.

5 Q. Mr. Lieber, could you just very  
6 briefly tell us your personal background, your  
7 age, your education, where you were born?

8 A. Well, I'm 79 years old. I was born in  
9 New York City, grew up in the Bronx in  
10 Washington Heights. And I was in the service  
11 about the age of, I think, 19 for four years in  
12 the air force. Came out. I don't know, I lived  
13 in Long Island with relatives, and then I lived  
14 in, down in Tudor City when I started working  
15 for Marvel, actually. That was in 1958.

16 Q. Okay.

17 A. And I worked for them from I guess, I  
18 don't know how many years. For the past 23  
19 years I know I've been working just on a  
20 newspaper strip for my brother, Stan Lee, and so  
21 I haven't been actually working for Marvel.

22 Q. Okay.

23 A. He pays me.

24 Q. Okay.

25 A. And it's been I think 23 years, I

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1 L. Lieber

2 Q. And in a deposition, we're entitled to  
3 your best estimate, even though we don't want  
4 you to speculate.

5 A. Okay.

6 Q. Are there any health reasons why you  
7 can't give your best testimony today?

8 A. No.

9 Q. Are you currently under any medication  
10 that might impair your memory?

11 A. No.

12 Q. Marvel's attorneys are not  
13 representing you in connection with this  
14 deposition, are they?

15 A. No.

16 Q. When was the first time -- strike  
17 that. Were you contacted at any time by Marvel  
18 regarding this lawsuit?

19 A. Yes.

20 Q. When was the first time you were  
21 contacted by Marvel?

22 A. I don't recall specifically. I guess  
23 within -- I didn't want to say "guess." I would  
24 estimate within the past year or so they wanted  
25 me to speak to them about the past or what I

1 L. Lieber

2 knew, and I -- I declined. Then I was contacted  
3 again and asked and declined, but then I changed  
4 my mind and said I would and I went down to --  
5 to talk to -- to the lawyers for Marvel and  
6 Disney.

7 Q. So, just taking it step-by-step, the  
8 first time you were contacted, do you remember  
9 who contacted you?

10 A. I don't remember his name. He was a  
11 lawyer. I -- I was uncertain as to what it was.

12 Q. And what did he say to you,  
13 approximately?

14 A. Something like we're -- approximately  
15 something like, "We're having a reunion of  
16 old-timers coming down. We would just like to  
17 discuss the past." And at first I thought it  
18 was a party or something, but then he said he  
19 would like to talk about, you know, things.

20 And I don't -- it's vague other than  
21 that, but I just remember saying, saying I  
22 didn't wish to, I declined. I was nervous about  
23 it.

24 Q. Did he mention to you what other  
25 old-timers were participating or might be

1 L. Lieber

2 Q. Other than Marvel's attorneys, did --  
3 who else did you speak with regarding this  
4 lawsuit?

5 A. Well, I spoke with my brother, Stan  
6 Lee.

7 Q. And when was the first time you spoke  
8 with your brother?

9 A. I don't recall, but I -- I spoke with  
10 him after I was -- I know after I was first  
11 approached and asked to come down and talk about  
12 the past.

13 Q. This was after you were approached and  
14 you testified --

15 A. After the phone call.

16 Q. And you testified that you declined;  
17 is that correct?

18 A. Yes. Yes.

19 Q. And then you got a call from your  
20 brother?

21 A. No, I talked -- I speak with him every  
22 week to -- to go over my work. I have to send  
23 my work to him, so while I was speaking to him,  
24 I mentioned it.

25 Q. And what did you say to him?



1 L. Lieber

2 A. I told him what had happened and, you  
3 know, the call, and I told him I declined.

4 Q. And what did he say to you?

5 A. He didn't tell me I shouldn't, but he  
6 sort of said, "Well, I hope you don't lose the  
7 strip because of it or something."

8 Q. And he was referring, when he said, "I  
9 hope you don't lose the strip because of this,"  
10 he was referring to your work on the Spider-Man  
11 strip?

12 A. Yes.

13 Q. Is that, is your work on the  
14 Spider-Man strip your sole means of livelihood?

15 A. Yes.

16 Q. And has it been your sole means of  
17 livelihood for the past I think you testified 23  
18 years?

19 A. Yes.

20 Q. Did you speak to your -- I think you  
21 mentioned did you speak to your brother Stan  
22 about your testifying in this case again after  
23 that?

24 A. Yes. I told him --

25 Q. When was that?

1 L. Lieber

2 Q. You mentioned that you have never been  
3 deposed in a lawsuit before.

4 A. No.

5 Q. Have you ever submitted a, what we  
6 call a declaration or affidavit in connection  
7 with a lawsuit?

8 A. No.

9 Q. Do you know what a declaration is?

10 A. I would imagine it's a statement of  
11 some kind that you sign or you write. And so,  
12 no, not that I recall.

13 Q. Did you -- were you ever interviewed  
14 in connection with any lawsuit previously?

15 A. No. No. The only, and this isn't  
16 interviewed, but, no, no, no, no, no.

17 Q. Moving on to your -- a new subject --  
18 career at Marvel, you testified that you began  
19 doing freelance work for Marvel in approximately  
20 June 1958; is that correct?

21 A. Yes.

22 Q. And you were writing scripts?

23 A. Yes.

24 Q. And those scripts were purchased by  
25 Marvel?

1 L. Lieber

2 A. Yes.

3 Q. You also at times did artwork?

4 A. Yes. Yes.

5 Q. And that artwork was also purchased by  
6 Marvel?

7 A. Yes.

8 MS. SINGER: Objection to form.

9 Assumes facts.

10 And now this is the part where I ask  
11 you same thing he asked you: If you can  
12 just give a pause so if I have to jump in  
13 with an objection.

14 THE WITNESS: Oh, I didn't -- I'm  
15 sorry.

16 MS. SINGER: That's okay.

17 THE WITNESS: I didn't hear. I'm --

18 MS. SINGER: No worries. No worries.

19 THE WITNESS: I'm trying to think of  
20 the answers so much and I -- yeah, I'll  
21 wait.

22 Q. During all the time you did work with  
23 Marvel, did you have a written contract with  
24 Marvel?

25 A. No.

1 L. Lieber

2 MS. SINGER: Good work. Good pause.

3 Q. When you did free -- when you did  
4 freelance work between 1958 and 1964, you did  
5 not have a written contract, correct?

6 A. No.

7 Q. Actually, I said "correct," so your --

8 A. Yes, it's correct.

9 MS. SINGER: You have to give a pause  
10 so he can object to his own questions too.

11 Q. Now, when you submitted your freelance  
12 work to Marvel, whether it's script or artwork,  
13 was it -- was it your understanding that Marvel  
14 was obligated to purchase that material from  
15 you?

16 MS. SINGER: Objection. Assumes  
17 facts.

18 A. My understanding they were not  
19 obligated.

20 Q. And was it your understanding that  
21 when they did buy your work, that they owned all  
22 rights to it?

23 MS. SINGER: Objection. Assumes  
24 facts.

25 A. Yes.

1 L. Lieber

2 Q. And that's because they had purchased  
3 it from you?

4 MS. SINGER: Objection.

5 A. Yes.

6 Q. Now, during the period when Marvel was  
7 buying your work, did you submit any work,  
8 whether scripts or artwork, to any other  
9 publishers?

10 A. No.

11 Q. Do you know of other, any other  
12 writers or artists who are working freelance, on  
13 a freelance basis with Marvel, who at that time  
14 were also submitting freelance work to other  
15 comic book publishers?

16 A. I -- I'm not certain. I know there  
17 were artists who work for other companies. I'm  
18 not certain whether it was at the same time they  
19 were working for Marvel. There were artists and  
20 writers who had worked -- I was almost the only  
21 one in the profession who couldn't work for  
22 another company, which, in this case, the most  
23 likely one would have been DC, because Stan was  
24 my brother. And -- should I go on?

25 Q. Please.

1 L. Lieber

2 the art director wanted to keep him, he had to,  
3 you know, give him -- give him a little more.

4 Q. Now, again, during the period 1958 to  
5 '65, where were you living at the time?

6 A. I was living in Tudor City.

7 Q. And is that where you did your  
8 freelance work?

9 A. Yes. I had a furnished room in  
10 somebody's apartment. I did my freelance work  
11 there.

12 Q. And did you pay for your own supplies,  
13 whatever they were?

14 A. I believe so, yes.

15 Q. So your own paper and pencils and  
16 writing implements?

17 A. Yeah, I -- yeah, I guess.

18 Q. Did you work on a typewriter?

19 A. Yes.

20 Q. And did you pay for that typewriter?

21 A. Yes, I -- I remember I went with Stan  
22 and I bought it once. We went to a typewriter  
23 store on Lexington Avenue and I paid for it,  
24 sure.

25 Q. Now, as a freelancer, if your work was

1 L. Lieber

2 of times?

3 A. No. Because if I had been, I might  
4 not have been so concerned about my expenses.

5 Q. Now, when you were paid by the page  
6 for the purchase of your work, did they take out  
7 any taxes from your checks?

8 MS. SINGER: Objection.

9 A. No.

10 Q. Did they -- did Marvel provide you  
11 with any paid vacation?

12 A. No.

13 Q. None whatsoever?

14 A. No. None whatsoever.

15 Q. For all the time you worked there?

16 A. That I did freelance work for them?  
17 No.

18 Q. Did Marvel provide you with any health  
19 insurance or health benefits during the time you  
20 worked there?

21 A. Yes.

22 Q. When was that?

23 A. Years later.

24 Q. So not in the period 1958 to 1965?

25 A. No. No. No. No. I don't think so,

1 L. Lieber

2 no. It was later on that they gave  
3 freelancers -- it was very nice. I had medical  
4 benefits and I had dental benefits, but then my  
5 freelance work, I was doing less, and they said  
6 they had raised the amount -- you had to do a  
7 certain amount of work to qualify for it, earn a  
8 certain amount of money, and I didn't qualify so  
9 I lost that and that was it.

10 Q. Now, you mention that you wrote the  
11 story, the first Thor story?

12 A. Yes.

13 Q. And that's the story that appeared in  
14 Journey Into Mystery No. 83?

15 A. I don't know the number, but yes, it  
16 was in Journey Into Mystery.

17 Q. Are you aware that, prior to that  
18 first -- and that was illustrated by Jack Kirby,  
19 correct?

20 A. I believe so.

21 Q. That story?

22 A. Yes.

23 Q. Are you aware that, prior to that  
24 first Thor story, Jack Kirby had actually done  
25 stories featuring the same Norse god with a



1 L. Lieber

2 A. Yes.

3 Q. Moving to a different subject, you  
4 testified earlier that it was your recollection  
5 that there were legends on the back of checks  
6 you received from Marvel for your freelance  
7 work?

8 A. Writing on the back, yes.

9 Q. And we'll just call that writing  
10 legends for purposes --

11 A. Okay, I didn't know the term. Yeah,  
12 something printed.

13 Q. And is it fair to say you don't know  
14 when those legends first started appearing?

15 MS. SINGER: Objection.

16 A. I think I had them at the very  
17 beginning when I started writing. I think I had  
18 them then because I -- I don't recall thinking  
19 there was something new, but perhaps, perhaps  
20 they weren't there. So I don't really know.

21 Q. And was it your understanding that the  
22 import of the writing on the back of these  
23 checks was that by signing the check and  
24 accepting payment for your work, you were  
25 transferring over to Marvel all rights in your

1 L. Lieber

2 work?

3 MS. SINGER: Objection.

4 A. Yes, it was my understanding.

5 Q. And do you recall -- strike that. On  
6 the checks you received for your freelance work,  
7 did they have language stating that your work  
8 was work made for hire?

9 A. No. No.

10 Q. When is the first time you heard the  
11 phrase "work made for hire," if any?

12 A. The first time. I don't know which  
13 came first, but I've only heard it recently in  
14 the last year or so, once from you using it to  
15 me in a conversation, and then I -- I looked up  
16 the case out of curiosity on the Internet and  
17 they were talking about it and they mentioned it  
18 as being an important thing or was it work for  
19 hire or not.

20 And then there was -- maybe not there,  
21 but I know I -- maybe it was -- it was there and  
22 also in the New York Times they had an article  
23 about this case some time ago, and in the  
24 article they mentioned again what it was about.  
25 I -- I don't understand the things very well,

1 L. Lieber

2 but in each case I think I -- I heard the  
3 expression "work for hire."

4 Q. And when you first heard that  
5 expression "work for hire" recently before doing  
6 any research, did you know what it meant?

7 A. No. I'm still not sure, and it's been  
8 explained to me and I'm still uncertain.

9 (Lieber Exhibit 5, reduced copies of  
10 six large pages of drawings by Jack Kirby  
11 that were in the possession of Lawrence  
12 Lieber and furnished in response to  
13 subpoena, marked for identification, as of  
14 this date.)

15 Mr. TOBEROFF: I'd like to mark the next  
16 exhibit as Lieber Exhibit 5. Lieber Exhibit  
17 5 are reduced copies of six large pages of  
18 drawings by Jack Kirby that were in the  
19 possession of Mr. Lieber and furnished to us  
20 in response to his subpoena.

21 Q. Mr. Lieber, do you recognize what has  
22 been marked as Lieber Exhibit 5?

23 A. Yes.

24 Q. Can you tell me what these drawings  
25 are?

1 L. Lieber

2 A. Well, this must have been a Hulk story  
3 and I have the originals at home. I don't  
4 remember when I first got them. I don't  
5 remember the year, but I obtained them when they  
6 were discarded.

7 Q. Can you tell me how you came into  
8 possession specifically of these drawings?

9 A. They -- I was in the office, the  
10 Marvel office. It probably was at -- no, it  
11 must have been at the -- on 57th Street when  
12 they were there on Madison, and Jack Kirby came  
13 out of Stan's office from -- and from the  
14 direction of Stan's office. He may, probably,  
15 he had come out of Stan's office, and he seemed  
16 upset. And he took the drawings, he had these  
17 drawings, he took them and he tore them in half  
18 and he threw them in a trash can, a large trash  
19 can.

20 And I, since I was such a big fan of  
21 his, I knew that at the end of the day, they  
22 would be discarded, you know, and would be  
23 trash. And I -- I saw it as an opportunity to  
24 have some of his originals to keep, to look at  
25 and study, and so I took them out of the trash

1 L. Lieber

2 can.

3 And there were other people in the  
4 office, but nobody else seemed to have noticed  
5 this, which I was glad about, and I just took  
6 them, walked over to where I was sitting and put  
7 them in my case. And I took them home and I  
8 taped them together, you know, I taped them all,  
9 and I kept them and I've kept them all these  
10 years to look at them and, as I say, to study  
11 them.

12 Q. If you look at the center of the page,  
13 you see a line going through the center of the  
14 first page, the third, fourth, fifth and sixth  
15 pages?

16 A. Yeah.

17 Q. Do you see that line?

18 A. Yes, I see the line.

19 Q. Is that because those pages were  
20 originally ripped in half?

21 A. Yeah, that's where it was ripped and I  
22 have tape on them.

23 Q. And the black marks on the left and  
24 right-hand margins --

25 A. Scotch tape.

1 L. Lieber

2 Q. -- in this photostat copy are scotch  
3 tape?

4 A. Yes.

5 Q. Have you scotch-taped them together?

6 A. Yes.

7 Q. What was your understanding of why or  
8 your impression of why Jack Kirby was upset when  
9 he tore these up and threw them in the trash?

10 A. I didn't know. I didn't speak to him.  
11 I assumed, seeing a man walk out of the office  
12 and tear his artwork up, that -- or I thought  
13 probably they were rejected and he was annoyed  
14 or disgusted. I didn't, you know, and I didn't  
15 know what it was. I didn't hear anything, so I  
16 just -- that was my first assumption, but I  
17 didn't know.

18 (Lieber Exhibit 6, an excerpt from  
19 Jack Kirby Collector Forty-One, marked for  
20 identification, as of this date.)

21 MR. TOBEROFF: I would like to mark as  
22 Lieber Exhibit 6 an excerpt from Jack Kirby  
23 Collector Forty-One.

24 A. Oh, yes.

25 Q. If you would please turn to page 71.